

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EUROSEMILLAS, S.A.,

Plaintiff,

v.

PLC DIAGNOSTICS INC., et al.,

Defendants.

Case No. [17-cv-03159-MEJ](#)

ORDER RE: MOTIONS TO DISMISS

Pending before the Court are two motions to dismiss filed by Eurosemillas as Counterclaimant and Third Party Defendant: a Motion to Dismiss the Counterclaims (MTD CC, Dkt. No. 46), and a Motion to Dismiss the Third Party Complaint (MTD TPC, Dkt. No. 54). The motions were fully briefed, and at the conclusion of the hearing on both motions, the Court ordered the parties to file supplemental briefs on a number of issues. *See* Order, Dkt. No. 72.

Eurosemillas filed its Supplemental Brief and responded to the topics raised by the Court. Eurosemillas Suppl. Br., Dkt. No. 74. On the date their supplemental brief was due, the Third Party Plaintiffs filed a “notice of voluntary dismissal of third party complaint without prejudice” pursuant to Rule 41(a)(1)(A)(i) and 41(c). Dismissal, Dkt. No. 75. The Third Party Plaintiffs filed this notice before Eurosemillas filed a responsive pleading. *See* Fed. R. Civ. P. 7(a) (defining pleadings); *see also Morrison v. Mahoney*, 399 F.3d 1042, 1046 (9th Cir. 2005) (“Rule 7(a) defines ‘pleadings’ as a complaint and answer; a reply to a counterclaim; an answer to a cross-claim; and a third party complaint and answer. Anything else is a motion or paper. . . . A motion to dismiss is not a pleading.”). The notice accordingly divests this Court of jurisdiction over the Third Party Claims.

Counterclaimants also filed a supplemental brief. CC Suppl. Br., Dkt. No. 76. Instead of

1 responding to the Court's request for further briefing, they indicated they planned to dismiss their
2 counterclaims for intentional interference with contractual relations, and requested Eurosemillas
3 enter into a stipulation allowing them to file an amended answer and counterclaim. *Id.* Should
4 Eurosemillas decline to stipulate, they planned to seek leave of Court to file an amended answer
5 and counterclaim. *Id.*

6 Any such stipulation shall be filed before March 2, 2018. If no stipulation is filed, the
7 Court will rule on Eurosemillas' Motion to Dismiss the Counterclaims.

8 **IT IS SO ORDERED.**

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10 Dated: February 22, 2018

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13 MARIA-ELENA JAMES
14 United States Magistrate Judge
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United States District Court
Northern District of California